

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

**DIVERSE MEDICAL
MANAGEMENT, INC.; AND AZZAM
MEDICAL SERVICES, LLC,**

Plaintiffs,

v.

**PLATINUM GROUP USA, INC.;
AMER RUSTOM; THE THIRD
FRIDAY TOTAL RETURN FUND, L.P.,
MICHAEL LEWITT, AMERICORE
HEALTH, LLC, GRANT WHITE, AND
JAMES B. BIDEN,**

Defendants.

**Case No: 19-CV-00046
JURY DEMAND**

**PLATINUM GROUP USA, INC.; AND
THE THIRD FRIDAY TOTAL
RETURN FUND, L.P.,**

Counter-Plaintiffs,

v.

**DIVERSE MEDICAL MANAGEMENT,
INC.; MICHAEL FREY; NATALIE
FREY; AND MOHANNAD AZZAM,**

Counter-Defendants

MOTION FOR JURISDICTIONAL DISCOVERY

Plaintiffs and Counterclaim Defendants Diverse Medical Management, Inc. and Azzam Medical Services, LLC, by and through their attorneys, respectfully submit this Motion for

Jurisdictional Discovery. Defendants¹ have alleged that certain unnamed limited partners of The Third Friday Fund, L.P. are Tennessee residents. Due to the vagueness of Defendants' factual assertions found in a skeletal self-interested declaration, coupled with the utmost importance of this issue, the Court should in its discretion permit limited jurisdictional discovery.²

A district court has “wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts.” *Ohio Nat. Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir.1990) (citations omitted). “When a challenge is to the actual subject matter jurisdiction of the court, as opposed to the sufficiency of the allegation of subject matter jurisdiction in the complaint which may be cured by an amendment to the pleading, the district court has the power to resolve any factual dispute regarding the existence of subject matter jurisdiction.” *Gould, Inc. v. Pechiney Ugine Kuhlmann*, 853 F.2d 445, 451 (6th Cir. 1988) (citing *Rogers v. Stratton Indus.*, 798 F.2d 913, 915 (6th Cir.1986). “The Sixth Circuit Court of Appeals has ‘stress[ed] that a party must be given an ample opportunity to secure and present evidence relevant to the existence of jurisdiction.’” *C.B. Fleet Co., Inc. v. Colony Specialty Ins. Co.*, No. 1:11-CV-0375, 2011 WL 13131001, at *2 (N.D. Ohio May 10, 2011) (quoting *Gould*, 853 F.2d at 451); *see Lovitz v. Daimler N. Am. Corp.*, No. 1:08-CV-629, 2009 WL 10723039, at *1 (N.D. Ohio Aug. 17, 2009) (ruling on Rule 12(b)(1) motion following “court ordered jurisdictional discovery in this case to determine whether the members of any LLC or partnership with an ownership interest in the defendant LLCs is a citizen of Ohio for diversity purposes.”)

¹ The use of “Defendants” in this Reply only refers to the defendants for whom counsel has appeared, i.e., all Defendants except Americore Health, LLC, and Grant White.

² Plaintiffs requested this jurisdictional information informally from Defendants on September 11, 2019, but have not yet received a response, one way or another.

The specific facts and posture of the instant case make jurisdictional discovery appropriate. As laid out in the Plaintiffs' contemporaneously-filed Reply in Furtherance of Motion to Enjoin, Defendants' counsel had multiple opportunities before now to raise the alleged lack of diversity with Plaintiffs' counsel.³ They chose not to do so, perhaps for tactical reasons.

More importantly, the vague and carefully-worded declaration of Michael Lewitt fails to provide sufficient information to allow Plaintiffs and the Court to evaluate Defendants' claimed lack of diversity. The Lewitt Declaration states:

4. I have personal knowledge that three of the limited partners of the Third Friday Fund are citizens of the State of Tennessee. Specifically, Third Friday Fund has limited partners who are located in and are citizens of Knoxville, Dickson, and Louisville, Tennessee.

5. Third Friday Fund has had limited partners who are citizens of the State of Tennessee beginning no later than in or about 2013 through the present.

(Lewitt Decl., Doc. No. 32-1.)

Essentially, Defendants assert that Third Friday Fund presently has limited partners who are residents of Tennessee, and had (presumably other) Tennessee limited partners beginning in 2013. (*Id.*) The carefully-worded "through the present" is subject to multiple interpretations. What the Lewitt Declaration fails to do is affirmatively identify limited partners of Third Friday Fund who were citizens of Tennessee on the date of filing this lawsuit.

Plaintiffs would be remiss if they did not highlight the identity of the declarant. Michael Lewitt is personally a defendant in this action, accused of fraud and conspiracy. (*See* Am. Compl, Doc. No. 8.) In response to a standard litigation hold letter, Mr. Lewitt sent a series of concerning communications to Plaintiffs' owners and attorney. (*See id* ¶¶ 83-92.) In light of this and—more

³ The identity of Third Friday Fund's limited partners, of course, is not publicly available, and Plaintiffs had no other mechanism to obtain it before filing.

importantly—in light of his unavoidable self-interest, the ambiguous assertions in Mr. Lewitt’s declaration demand limited further inquiry.

As a result, Plaintiffs seek jurisdictional discovery as to each limited partner who Third Friday alleges is a citizen of Tennessee, restricted to the following subjects:

1. name of the limited partner;
2. whether the limited partner is an individual, trust or other entity and, if so, identify and describe it (e.g. if the limited partner is an entity, provide the name of the entity, the type of entity and the address of its principal place of business; and, if it is a trust, provide the name of the trust, the name of the trust trustee, the situs of the trust and under what law it is governed);
3. home address of each limited partner of the business address if the limited partner is a trust or an entity;
4. date the limited partner became a limited partner in Third Friday Fund;
5. whether the limited partner currently is a limited partner; and
6. describe the limited partner’s ownership interest in Third Friday Fund (e.g. whether the limited partner has a direct ownership interest in Third Friday Fund or an indirect ownership interest whereby the limited partner’s interest involves a trust or an entity).

Whether this additional information is provided in response to Plaintiffs’ informal requests⁴ or in response to Plaintiffs’ jurisdictional discovery makes no difference to Plaintiffs. A proper and expedient resolution is of the utmost importance.

⁴ A copy of the letter requesting this information is attached as Exhibit 1 to Plaintiffs’ Reply in Furtherance of Motion to Enjoin. Defendants have not yet responded to that letter.

Respectfully submitted,

/s/ Robert A. Peal

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served on the following via email and/or the Court's CM/ECF system:

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And on the following via Certified Mail and U.S. Mail:

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on this the 13th day of September, 2019.

/s/ Robert A. Peal